IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6778 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDIP KANTIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6778 of 2001

MR KB ANANDJIWALA for Petitioner No. 1

Mr S S Patel, APP for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/07/2003

ORAL JUDGEMENT

The petitioner has filed this petition under section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') in order to quash C.R. No.II-56/2001 registered before Borsad police station against the petitioner for offences punishable under sections 20 and 21 of the Indian Telegraph Act, 1885 (for short, 'the Act') on the ground that the offences are non-cognizable offences and, therefore it could not be registered as cognizable offences and the Investigating Police Officer cannot investigate the same without the permission of the court concerned under section 155 (2) of the Code.

2. Rule was issued and in response to the service of notice of rule, Mr S S Patel, learned APP appears on behalf of the State and Mr M R Shah, learned Addl.Central Government Standing Counsel appears for respondent no.2-original complainant. On hearing, it is found that the offence in question is non-cognizable offence. This can be gathered from sections 20 and 21 of the said Act. The provisions contained in sections 20 and 21 may be reproduced for ready reference:

"Section 20. Establishing, maintaining or working unauthorised telegraph:

1) If any person establishes, maintains or works a telegraph within (India) in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to 3 years, or with fine, or with both, and, in any other case with a fine which may extend to one thousand rupees.

2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under this section in respect of wireless telegraph shall, for purposes of the said Code be bailable and non-cognizable.

Section 21. Using unauthorised telegraphs -

If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked, in contravention of this Act, transmits or receives any message by such

telegraph, or performs any service incidental thererto, or delivers any message for transmission by such telegraph or accepts delivery of any message sent thereby he shall be punished with fine which may extend to fifty rupees."

3. In view of the above provision, it is clear that the offences alleged are non-cognizable and, therefore, the offences could not have been registered as cognizable offences by the Police Officer in-charge of the police station, same way, it could not be investigated by the Investigating Police Officer without leave of the Court concerned under section 155 (2) of the Code. In above view of the matter, this petition is required to be allowed and the aforesaid FIR is required to be quashed and set aside.

4. At the same time, when the complainant feels that some offence has been committed and if the said offence is non-cognizable, then it would be open to the original complainant to file a complaint in accordance with law, if he so desires. It would also be open to the Police Officer concerned to take appropriate action in accordance with law. In above view of the matter, this petition is allowed. The FIR being C.R. II.56/2001 recorded at Borsad Police Station is ordered to be quashed and set aside and naturally the Police Investigating Officer will not investigate the said offences. It would be open to the second respondent-original complainant to complain in accordance with law or in the alternative, it would be open to the Police Officer to take appropriate action in accordance with law.

Rule is made absolute to the above extent.

[D P Buch, J.]
msp